



PACIFIC LEGAL FOUNDATION

May 24, 2016

The Honorable Chief Justice Tani G. Cantil-Sakauye
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *California Cannabis Coalition, et al. v. City of Upland, et al.*, No. S234148

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pacific Legal Foundation (PLF) files this letter pursuant to Rule 8.500 of the California Rules of Court. PLF respectfully requests that this Court grant the petition for review (Petition) filed by the City of Upland, *et al.*, in the above-referenced case.

IDENTITY AND INTEREST OF AMICUS CURIAE PACIFIC LEGAL FOUNDATION

Donor-supported PLF is the oldest public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. Thousands of individuals across the country support PLF, as do numerous organizations and associations. PLF is headquartered in Sacramento, California, and has offices in Washington, D.C., Washington State, Florida, and Hawaii.

PLF actively engages in research and litigation nationwide on a broad range of public interest issues. PLF has participated as amicus curiae in numerous cases interpreting the scope of voter-enacted limitations on the taxing power. *See, e.g., Schmeer v. County of Los Angeles*, 213 Cal. App. 4th 1310 (2013); *Citizens for Fair REU Rates v. City of Redding*, 347 P.3d 89 (Cal. 2015) (petition for review granted); *California Ass'n of Prof'l Scientists v. Dep't of Fish & Game*, 79 Cal. App. 4th 935 (2000); *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866 (1997); *Santa Clara Cnty. Local Transp. Auth. v. Guardino*, 11 Cal. 4th 220 (1995).

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The Honorable Chief Justice Cantil-Sakauye
and Honorable Associate Justices
May 24, 2016
Page 2

**THIS COURT SHOULD GRANT THE PETITION AND
DECIDE WHETHER NEW TAXES IMPOSED BY INITIATIVE MUST
MEET THE CONSTITUTIONAL REQUIREMENTS OF ARTICLE XIII C**

PLF urges review of the decision of the Fourth District Court of Appeal in *California Cannabis Coalition v. City of Upland*, 245 Cal. App. 4th 970 (2016) (*CCC v. Upland*). Review is proper under Rule of Court 8.500(b)(1) because the case raises an important question of law that this Court should resolve. The question is whether the proponents of a new tax can evade constitutional prerequisites by introducing the tax as an initiative rather than a resolution of the governing body. The lower court held that taxes imposed by initiative are exempt from Article XIII C of the California Constitution. *Id.* at 974. Under this ruling, local governments need not apply the constitutional requirements applicable to new taxes—a vote of the electorate in a general election. *See* Cal. Const. art. XIII C, § 13C(2)(b), (c), and (d).

Article XIII C imposed new restrictions on general and special taxes. Most importantly, for purposes of this case, Article XIII C requires voter approval of all taxes imposed by any local government (Sec. 2(a)), and approval of general taxes by a majority vote in a regularly scheduled general election (Sec. 2(b)). Article XIII C, Sec. 3, allows the reduction or repeal of any local tax, assessment, fee, or charge by initiative. It is silent as to new taxes imposed by initiative.

The issue in this case is an important one because the taxpayers of California have adopted three constitutional provisions, each of which emphasizes the right to vote on new taxes, fees, or assessments.

**CALIFORNIA TAXPAYERS BATTLE FOR
THE RIGHT TO VOTE ON NEW TAXES**

The appellate court’s review of Proposition 218 focused on four words—“imposed by local government.” *See, e.g., CCC v. Upland*, 245 Cal. App. 4th at 983, 987-88. This extremely narrow view led the court to conclude that the voters intended to include taxes imposed by local government, but not those imposed by initiative. *Id.* at 988. But PLF is aware of no evidence that the voters understood or considered the distinction between taxes imposed by local government and those imposed by initiative. Courts cannot rewrite language to conform to an assumed intent not apparent from the language. *People v. Superior Court*, 48 Cal. 4th 564, 571 (2010).

As demonstrated below, a broader view of Proposition 218, as well as Propositions 13 and 26, demonstrates the desire of taxpayers to vote on taxes, without regard to the method by which they are imposed. Article XIII C (Proposition 218) must be construed by examining the history of California’s tax initiatives, which began with Proposition 13. *See Citizens Ass’n of Sunset Beach v. Orange Cnty. Local Agency Formation Comm’n*, 209 Cal. App. 4th 1182, 1195 (2012) (examining the history of Proposition 218 to understand its intent.).

THE CALIFORNIA TAX REVOLT BEGINS WITH PROPOSITION 13

In 1978, the taxpayers challenged the ability of local governments to increase property taxes without voter approval. See Julie K. Koyama, *Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources*, 22 Pac. L.J. 1333, 1337 (1991) (prior to Proposition 13, local governments generally had the power to impose any taxes and fees by a vote of their governing bodies). On June 6th, 1978, the largest turnout of California voters since 1958 resoundingly approved the measure by a margin of two to one. Kathryn Julia Woods, *California's Voters Revolt Lynwood, California and Proposition 13, A Snapshot of Property's Slipping from Whiteness's Grasp*, 37 UWLA L. Rev. 171, 188 (2004); see William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & Pol. 607, 622 (1996) (“Rich and poor, north and south, rural and urban, big and small, almost every community in the state gave [Proposition 13] a majority.”).

Proposition 13's basic one-percent limit in Article XIII A, Section 1, did not mention special assessments; it only mentioned ad valorem property taxes. Nor did the two-thirds vote provisions in Article XIII A, Section 4, mention assessments; it only mentioned special taxes. Consequently, local governments exploited perceived loopholes by subjecting taxpayers to excessive assessments, fees, and charges that frustrated the requirements for voter approval. Government assessments were constrained only by “the limits of human imagination.” *Citizens Ass'n of Sunset Beach*, 209 Cal. App. 4th at 1196. Local agencies and commissions increased assessments by more than 2400% in 15 years, while cities raised benefit assessments by almost 10 times their previous amount. *Id.* at 1195; see Cal. Const. art. XIII A, § 4 (only cities, counties, and “special districts” are subject to the two-thirds voter requirement).

PROPOSITION 218—THE RIGHT TO VOTE ON TAXES ACT

Voters attempted to close the special taxes/assessment loophole by adopting Proposition 218. The Statement of Purpose findings and declaration of purpose in Proposition 218 were stated, in part, as follows:

[L]ocal governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

Ballot Pamp., Gen. Elec. (Nov. 5, 1996), text of Prop. 218, § 2, at 108; see *Bay Area Cellular Telephone Co. v. City of Union City*, 162 Cal. App. 4th 686, 692-93 (2008).

The Honorable Chief Justice Cantil-Sakauye
and Honorable Associate Justices
May 24, 2016
Page 4

The Legislative Analyst explained that, “[i]n general, the intent of Proposition 218 is to ensure that **all taxes and most charges** on property owners are subject to voter approval.” Legislative Analyst’s Office, *Understanding Proposition 218*, Dec. 1996, Ch. 1, at 2 (emphasis added).¹

In spite of the changes mandated by Proposition 218, local governments still managed to impose fees and assessments without voter approval. See, e.g., *Paland v. Brooktrails Twp. Cmty. Servs. Dist. Bd. of Dirs.*, 179 Cal. App. 4th 1358, 1362 (2009) (charge imposed on parcels for the basic cost of providing water or sewer service, regardless of actual use, is not subject to ballot approval); *Richmond v. Shasta Cmty. Servs. Dist.*, 32 Cal. 4th 409, 415 (2004) (assessments on property for capital improvements and fire suppression did not violate Proposition 218); *Howard Jarvis Taxpayers Ass’n v. City of Riverside*, 73 Cal. App. 4th 679, 681 (1999) (street lighting assessments were not subject to Proposition 218); *Howard Jarvis Taxpayers Ass’n v. City of San Diego*, 72 Cal. App. 4th 230, 234 (1999) (assessments to provide revenue to defray the costs of services and programs to benefit businesses were not subject to Proposition 218).

PROPOSITION 26—EXPANDING VOTER PROTECTIONS

Proposition 26, approved by California voters on November 2, 2010, allows the people to vote on levies, charges, or exactions imposed by local governments. Proposition 26’s Findings and Declaration of Purpose state that local governments had disguised new taxes as “fees” in order to extract revenue from California taxpayers without abiding by the voting requirements mandated by Propositions 13 and 218. Ballot Pamp., *Text of Proposition 26*, § 1, at 114 (Nov. 2, 2010).² Proposition 26 closed the “loopholes in Propositions 13 and 218,” which had allowed the proliferation of state and local taxes disguised as fees without a two-thirds vote of the Legislature or the voters’ approval. *Schmeer*, 213 Cal. App. 4th at 1323, 1326.

Proposition 26 defines a “tax” to include “any levy, charge, or exaction of any kind imposed by” the state or a local government, with specified exceptions. Working in concert with Propositions 13 and 218, this means any new local government mechanism that creates revenue by extracting money from the people must have voter approval. Art. XIII A, § 4 (Proposition 13); art. XIII C, § 1 (Proposition 218).

The voters’ intent to vote on new taxes could not be more clear.

¹ http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html.

² http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2304&context=ca_ballot_props.

The Honorable Chief Justice Cantil-Sakauye
and Honorable Associate Justices
May 24, 2016
Page 5

CONCLUSION

Given the voters' undeniable desire to ensure that they can approve or deny new taxes, this Court should decide the important question raised in this case: Can proponents of a new tax evade constitutional prerequisites by introducing the tax as an initiative rather than a resolution of the governing body.

For all of the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

I, Barbara A. Siebert, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On May 24, 2016, true copies of LETTER BRIEF OF AMICUS CURIAE PACIFIC LEGAL FOUNDATION were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 24th day of May, 2016, at Sacramento, California.

BARBARA A. SIEBERT